

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0043
Sales and Use Tax**

For Tax Periods December 2004, February 2005, June 2005

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ISSUE

I. Sales and Use Tax-Late Payment Penalty and Interest

Authority: IC § 6-2.5-6-1, IC § 6-8.1-10-2.1(a)(2), IC § 6-8.1-5-1(b), IC § 6-8.1-5-4, IC § 6-8.1-10-1(e).

The taxpayer protests the imposition of the late payment penalty and interest.

STATEMENT OF FACTS

The taxpayer operates an auto repair business. The Indiana Department of Revenue imposed late payment penalties and interest on the taxpayer's sales tax payments for December 2004, February 2005, and June 2005. The taxpayer protested these assessments. A telephone hearing was held. This Letter of Findings results.

I. Sales and Use Tax-Late Payment Penalty and Interest

DISCUSSION

The taxpayer's sales tax returns are due to the department on the 20th of the month following the tax period. IC § 6-2.5-6-1. The taxpayer's sales tax returns for the months in question all were postmarked and arrived at the department significantly later than the due dates. The department assessed a late payment penalty on the late payments under authority of IC § 6-8.1-10-2.1(a)(2). The taxpayer argued that penalties were improperly imposed because the returns were mailed on time and misdelivered by the post office.

All tax assessments are presumed to be accurate and taxpayers bear the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(b). Taxpayers are required to maintain adequate records to allow the department to later determine the taxpayer's proper liability by reviewing those records. IC § 6-8.1-5-4. The taxpayer was unable to produce any documentation to demonstrate that the returns were actually mailed at the proper times.

The taxpayer did not sustain its burden of proving that the late payment penalties were improperly imposed.

The taxpayer also protested the imposition of interest on the late payments. The department does not have the authority to waive the interest imposed on late payments. IC § 6-8.1-1-10(e).

FINDING

The taxpayer's protests to the imposition of the penalties and interest are denied.